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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,080	10/06/2003	Michael Roy Barry	TOMK0001	9923
25235	7590	11/05/2004	EXAMINER	
HOGAN & HARTSON LLP ONE TABOR CENTER, SUITE 1500 1200 SEVENTEENTH ST DENVER, CO 80202			ARYANPOUR, MITRA	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 11/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/680,080

Applicant(s)

BARRY, MICHAEL ROY

Examiner

Mitra Aryanpour

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “4” has been used to designate both shaft axis and perpendicular line; and reference character “6a” has been used to designate both short horizontal line and other end of intermediate connecting member 7a; reference character “12” has been used to designate both longer vertical line and flat median portion; reference characters “7 and 7a” have been used to designate both intermediate member and connecting member. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities: on page 3, line 19, “hhas” should be changed to --has--; on page 11, line 16, “fufill” is misspelled, it should be changed to --fulfill--. Appropriate correction is required for the above objections.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Blackburn (774,862).

Regarding claim 1, Blackburn discloses a cue rest comprising an elongated shaft (handle 1) defining a central longitudinally extending shaft axis, a table engaging means (lower ends of the pair of jaws 2), and an intermediate connecting means (arms 4) connecting the table engaging means with the shaft, the intermediate connecting means (arms 4) being shaped for avoiding an obstruction on the table adjacent a location where the table engaging means is to engage the table (see figure 2).

Regarding claim 2, Blackburn shows the intermediate connecting means (arms 4) extends between two spaced apart ends, one end being connected to the shaft, and the other end being connected to the table engaging means (see figure 2).

Regarding claim 3, Blackburn shows the two ends of the intermediate connecting means (arms 4) are aligned with each other and with the shaft axis (see figures 1 and 5).

Regarding claim 4, Blackburn shows the intermediate connecting means (arms 4) comprises an elongated intermediate connecting member extending between the shaft and the table engaging means (lower ends of the pair of jaws 2).

Regarding claim 5, Blackburn shows a cue engaging means (the upper ends of the pair of jaws 2) for cradling the cue extends from the table engaging means.

Regarding claim 24, Blackburn discloses a cue rest comprising an elongated shaft (handle 1) defining a central longitudinally extending shaft axis connected to a cruciform structure (jaws 2), wherein the cruciform structure (either the upper end of one of the pair of jaws 2; or alternatively the entire jaws 2 of one of the pair of jaws) is composed of a pair of table engaging means (the lower end of the jaws or alternatively the entire jaws 2 of one of the other pair of jaws) and a pair of cue engaging means (the upper end of the jaws; or alternatively the entire jaws 2 of the other one of the pair of jaws) defining angles between the arms therein (see figure 4), wherein a cue support (the broadest reasonable interpretation of *cue support* would include the opening between the upper jaws) is locatable within at least one of the angles of the cruciform structure.(see column 1, lines 45-48).

Regarding claim 25, Blackburn shows the cue support is integrally formed with the cruciform structure (in the instant case taken to be the lower end of one of the pair of jaws 2; see figure 4).

Regarding claim 26, Blackburn additionally shows the cue support (in the instant case taken to be one of the pair of jaws 2) is independently formed from the cruciform structure (in the instant case taken to be the other one of the pair of jaws 2) and is adapted to be mounted upon the cruciform structure (one jaws 2 is positioned on top of the other jaws 2; see figure 1).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blackburn (774,862).

Regarding claim 6, Blackburn does not show the intermediate connecting member (arms 4) to be arcuate shaped. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to make the arms arcuate, because Applicant has not disclosed that making the arms arcuate, provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the arms taught by Blackburn or the claimed arcuate arms because both arms perform the same function of attaching the cue rest to the shaft. Therefore, it would have been an obvious matter of design choice to modify Blackburn to obtain the invention as specified in claim 6.

Regarding claim 7, Blackburn does not show the intermediate connecting member (arms 4) to be half-bottle shaped. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to make the arms half-bottle shaped, because Applicant has not disclosed that making the arms arcuate, provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the arms taught by Blackburn or the claimed half-bottle shaped arms because both arms perform the same function of attaching the cue rest to the shaft. Therefore, it would have been an

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obvious matter of design choice to modify Blackburn to obtain the invention as specified in claim 7.

Alternatively:

7. Claims 1-14 19-21, 24, 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Blackburn (774,862).

Regarding claim 1, Knight discloses a cue rest comprising an elongated shaft (body 10) defining a central longitudinally extending shaft axis, a table engaging means (lower arms 16 as in figures 4 and 5), and an intermediate connecting means (rod or slide 12) connecting the table engaging means with the shaft, the intermediate connecting means (rod or slide 12) being shaped for avoiding an obstruction on the table adjacent a location where the table engaging means is to engage the table (see figures 3-5).

Regarding claim 2, Knight shows the intermediate connecting means (rod or slide 12) extends between two spaced apart ends, one end being connected to the shaft, and the other end being connected to the table engaging means (see figures 3 and 5).

Regarding claim 3, Knight shows the two ends of the intermediate connecting means (rod 12) are aligned with each other and with the shaft axis (see figures 3 and 5).

Regarding claim 4, Knight shows the intermediate connecting means (rod or slide 12) comprises an elongated intermediate connecting member extending between the shaft and the table engaging means (lower arms 16 as in figures 4 and 5).

Regarding claim 5, Knight shows a cue engaging means (upper arms 16) for cradling the cue extends from the table engaging means (see figures 5-7).

Regarding claim 8, Knight shows the table engaging means (lower arms 16) is adjustably mounted to the intermediate connecting means (rod or slide 12; see page 2, paragraphs 1, 4 and 6).

Regarding claims 9 and 10 Knight shows the table engaging means (lower arms 16) is pivotally connected to the intermediate connecting means and it is pivotable about the shaft axis (see figure 5; and page 2, paragraph 6).

Regarding claim 11, Knight provides a means (see page 2, first paragraph, lines 6-11) to restrain the rotational movement of the intermediate connecting means about the shaft axis.

Regarding claim 12, Knight additionally shows the table engaging means (lower legs 16) comprises two arms and the cue engaging means (upper legs 16) comprises two arms, which are arranged to form a cruciform structure, the arms defining angles therebetween (see figures 1, 2, 5-7).

Regarding claim 13, Knight shows at least one of the table engaging means or cue engaging means houses a rotation restraining means (see page 2, paragraph 1, lines 6-11 and paragraph 2).

Regarding claim 14, Knight additionally shows the intermediate connecting means (rod or slide 12) is connectable to the table engaging means (lower arms 16) by an axial bolt (the broadest reasonable interpretation of *axial bolt* would include catchment device 22), which is adapted for engaging with the rotation restraining means (see page 2, paragraph 2).

Regarding claim 19, Knight shows the axial bolt (catchment device 22) is integrally formed with the intermediate connecting means (see figure 2, also page 2, paragraph 2, lines 1-3).

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Regarding claim 20, Knight shows a cue support (the broadest reasonable interpretation of *cue* support would include boss 18) is locatable within at least one of the angles of the cruciform structure.

Regarding claim 21, Knight shows a cue support (the broadest reasonable interpretation of *cue* support would include boss 18).

Regarding claim 24, Knight discloses a cue rest comprising an elongated shaft (rod or slide 12) defining a central longitudinally extending shaft axis connected to a cruciform structure (combination of upper and lower legs 16), wherein the cruciform structure (combination of upper and lower legs 16) is composed of a pair of table engaging means (the lower engaging legs 16) and a pair of cue engaging means (the upper legs 16) defining angles between the arms therein (see figures 1, 2, 5-7), wherein a cue support (the broadest reasonable interpretation of *cue support* would include boss 18) is locatable within at least one of the angles of the cruciform structure.

Regarding claim 27, Knight discloses a cue support (lower legs 16) for a cue, said cue support (upper legs 16) having a detachably mounted cue engaging means (the broadest reasonable interpretation of *cue engaging means* would include upper legs 16).

8. Claims 22, 23 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blackburn (774,862).

Regarding claim 22, Knight shows the cue support (boss 18) is integrally formed with the cruciform structure (see figure 2). To the extent if one argues that the cue support of Knight is not integrally formed, it would have been obvious to form the cue support integral with the cue

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engaging means, since it has been held that forming a one-piece article which had formerly been formed in two-pieces and put together would have been a matter of obvious engineering choice.

In re Larson, 144 USPQ 347 (CCPQ 1965); *In re Lockart*, 90 USPQ 214 (CCPA 1951).

Regarding claim 23, Knight shows the cue support (boss 18) is detachably mountable on the cue engaging means. To the extent if one argues that the cue support of Knight is not detachably mountable on the cue engaging means, it would have been obvious to make the cue support detachably mountable on the cue engaging means, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Regarding claim 25, Knight shows the cue support (boss 18) is integrally formed with the cruciform structure. Note the rejection of claim 21.

Regarding claims 26 and 28, note the rejection of claim 23.

Allowable Subject Matter

9. Claims 15-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims:

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. McDonald (GB); Terry (GB); Burrows (GB); Clement (GB); Black; Rear; Frejd; Wise; Legacie, Jr.; Watlack et al; Strub.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 703-308-3550. The examiner can normally be reached on Monday - Friday 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA
29 October 2004



MITRA ARYANPOUR
PATENT EXAMINER